

**United States Department of Labor
Employees' Compensation Appeals Board**

G.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New Orleans, LA, Employer**

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**Docket No. 15-95
Issued: April 2, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 16, 2014 appellant filed a timely appeal from a September 26, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant received an overpayment in compensation in the amount of \$31,296.11 for the period February 19, 2011 through March 23, 2014; (2) whether OWCP properly denied waiver of the overpayment; and (3) whether OWCP properly required repayment of the overpayment by deducting \$179.00 every 28 days from appellant's continuing compensation.

On appeal appellant generally asserts that he does not understand the basis for the overpayment.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

Appellant, then a 28-year-old part-time regular letter carrier, filed a traumatic injury claim alleging that on January 3, 2011 he injured his lower back while loading packages onto a mail truck. He stopped work that day. On February 10, 2011 the claim was accepted for lower back sprain, lumbar region. The employing establishment advised that appellant's regular work schedule was 30 hours per week, 10:30 a.m. to 4:30 p.m., Monday, Tuesday, Wednesday, Thursday, and Saturday. The claim was accepted for lumbar sprain.

In a February 9, 2011 report, Dr. Robert A. Steiner, a Board-certified orthopedic surgeon, advised that appellant should work light duty. Appellant received continuation of pay from January 3 to February 17, 2011 and thereafter filed claims for compensation (Form CA-7). The employing establishment provided an injury compensation worksheet that indicated appellant's hourly wage was \$26.22. It further advised that there was no work available within his restrictions and that the annual base pay for appellant's step and grade was \$52,463.00.

A pay rate calculation dated March 14, 2011 indicated that, based on an annual full-time pay rate of \$52,463.00, appellant's weekly pay rate was \$1,008.90 or \$25.22 per hour, and he received wage-loss compensation at this full-time rate beginning February 19, 2011. OWCP verified this pay rate on August 1, 2011. At that time, the employing establishment reported that appellant had returned to work on April 18, 2011 and was sent home under the National Reassessment Process (NRP). Dr. Steiner continued to provide physical restrictions. Appellant was placed on the periodic compensation rolls in July 2011.

On August 3, 2011 OWCP expanded the accepted condition to include displacement of lumbar intervertebral disc without myelopathy. Appellant was referred to vocational rehabilitation. Following vocational testing, a rehabilitation plan was approved for training plan toward a business associate of arts degree. He began training at Delgado Community College in January 2012. Appellant graduated with an associate degree in business in December 2013, and job placement was begun in January 2014. The vocational rehabilitation counselor identified the positions of supervisory personnel clerk, leasing agent, administrative assistant, apartment house manager, and office manager, as described in the Department of Labor, *Dictionary of Occupational Titles*, as meeting within appellant's physical limitations.

Appellant returned to part-time limited duty at the employing establishment, three hours a day, five days a week, on March 24, 2014. On May 14, 2014 OWCP ascertained that he was initially hired as a part-time regular employee, to work 30 hours a week. An OWCP payment memorandum dated May 27, 2014 indicated that, based on an hourly base pay rate when injured of \$25.22 per hour, for 30 hours per week, appellant's weekly pay rate when injured should have been \$756.60. Following his return to work in March 2014, he received wage-loss compensation for three hours a day, based on the part-time weekly pay rate of \$756.60.

On May 29, 2014 OWCP proposed to reduce appellant's compensation benefits based on his capacity to earn wages as a supervisory personnel clerk. Based on the opinion of Dr. Steiner, he could return to work with physical restrictions, and that the position was within the permanent restrictions identified by the physician. OWCP further noted that the labor market survey prepared by the vocational rehabilitation counselor found the position reasonably available in the

local labor market and that the entry-level wage was \$654.80, or \$491.10 for 30 hours per week. On July 17, 2014 the rehabilitation counselor advised that part-time positions were available.

By decision dated July 24, 2014, OWCP reduced appellant's compensation benefits based on his capacity to earn wages as a supervisory personnel clerk, which yielded a 37 percent loss of wage-earning capacity. It applied the principles set forth in *Albert C. Shadrick*,² as codified in section 10.403 of OWCP's regulations,³ to determine the percentage of the employee's loss of wage-earning capacity.⁴ The date-of-injury pay rate on which compensation was based was \$756.60 per week.

On August 11, 2014 OWCP issued a preliminary finding that an overpayment of compensation in the amount of \$31,296.01 had been created because appellant was compensated at an incorrect pay rate for the period February 19, 2011 through March 23, 2014. The attached memorandum did not explain how the overpayment was calculated other than to state he was compensated based on reported annual earnings of \$52,463.00. It found him without fault in its creation, and he was provided an overpayment action request form and an overpayment questionnaire. Appellant was given 30 days to submit a response. A "Manual Adjustment Form" indicated that appellant was paid compensation of \$125,078.30 when he should have received compensation of \$93,782.29, yielding an overpayment of compensation of \$31,296.01.

Appellant did not reply to the preliminary determination. By decision dated September 26, 2014, OWCP finalized the preliminary overpayment decision, finding that he received an overpayment of compensation in the amount of \$31,296.01 and, while he was not at fault, he was not entitled to waiver of the overpayment because he failed to provide the requested information. The overpayment was to be repaid by withholding \$179.00 from each compensation payment beginning October 19, 2014. With regard to "calculation of overpayment," the decision explained "see enclosed documents." The record does not show that any documents were enclosed.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁵ Section 8129 provides, in pertinent part:

"When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations

² 5 ECAB 376 (1953).

³ 20 C.F.R. § 10.403.

⁴ *James M. Frasher*, 53 ECAB 794 (2002).

⁵ 5 U.S.C. § 8102(a).

prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”⁶

Section 8129 provides, in pertinent part:

“When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.”⁷

A final decision of OWCP shall contain findings of fact and a statement of reasons.⁸ With respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not adequately explain to appellant how the overpayment of compensation was created. The relevant documentation found in the case record includes information from the employing establishment, OWCP pay rate calculations, and an OWCP manual adjustment form. None of these, however, clearly explain to appellant why the pay rate for compensation purposes was changed from \$1,008.90 to \$756.60 per week. As OWCP did not fully explain its rationale for finding an overpayment and did not provide adequate documentation to support its explanation to appellant, the Board cannot affirm the overpayment decision.

Neither the August 11, 2014 preliminary determination nor the September 26, 2014 final overpayment decision has any explanation regarding how the overpayment was calculated. As noted above, a final OWCP decision must contain findings of fact and a statement of reasons,¹⁰ and with respect to overpayment decisions, OWCP must provide clear reasoning to appellant showing how the overpayment was calculated.¹¹ OWCP did not do so in this case.

Accordingly, the case will be remanded to OWCP. On remand OWCP shall provide a decision with clear reasoning as to how any overpayment of compensation was created and, if so, provide a clear explanation of how it was calculated. It should fully explain its rationale and provide adequate documentation to support its explanation. After such further development as deemed necessary, OWCP shall issue an appropriate decision.

⁶ *Id.* at § 8129(a).

⁷ *Id.*

⁸ *O.R.*, 59 ECAB 432 (2008); 20 C.F.R. § 10.126.

⁹ *M.S.*, Docket No. 08-2070 (issued September 11, 2009); *see* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4.a(1) (June 2009).

¹⁰ *O.R.*, *supra* note 8.

¹¹ *Supra* note 9.

Based on the Board's finding, it is premature for the Board to address the remaining issues.

The Board notes that on July 24, 2014 OWCP reduced appellant's compensation based on his capacity to earn wages as a supervisory personnel clerk. Appellant did not appeal this decision with the Board.¹² However, the wage-earning capacity determination, which utilized the *Shadrick* formula, indicated that the date-of-injury pay rate on which compensation was based was \$756.00 per week. As noted above, OWCP has not provided a clear explanation to appellant regarding this change in appellant's pay rate for compensation purposes.

CONCLUSION

The Board finds this case is not in posture for decision regarding whether an overpayment of compensation was created and, if so, whether the amount of the overpayment was properly created.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: April 2, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹² See 20 C.F.R. § 501.3(e).